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8 775-784-5438  
9

10 **UNITED STATES DISTRICT COURT**  
11 **DISTRICT OF NEVADA**

12 **-oOo-**

13  
14 UNITED STATES OF AMERICA, )  
15 )  
16 Plaintiff, )  
17 )  
18 v. ) 2:10-CR-237-GMN-PAL  
19 )  
20 JOSE VIDAL PENA-CHAVEZ, )  
21 )  
22 Defendant. )  
23 \_\_\_\_\_)  
24

25 **JOINT STIPULATION FOR A SENTENCE REDUCTION**  
26 **PURSUANT TO 18 U.S.C. § 3582(c)(2)**  
27

28 The United States of America, by Assistant United States Attorney  
29 Elizabeth O. White, and Defendant Jose Vidal Pena-Chavez, by Assistant  
30 Federal Public Defender Nisha Brooks-Whittington, submit the following  
31 Joint Stipulation for Discretionary Relief pursuant to 18 U.S.C.  
32 § 3582(c)(2).

1 The parties agree and stipulate to the following:

2 **A. Material Facts in Support of Joint Stipulation**

3 Defendant was previously convicted and sentenced for an offense  
4 involving controlled substances.

5 On August 30, 2011, this Court sentenced Defendant to 87 months'  
6 imprisonment for conspiracy to distribute a controlled substance in  
7 violation of 21 U.S.C. § 841(a)(1), (b)(1)(A)(viii), and 846. CR 61. This Court  
8 previously found: (a) that Defendant's total offense level was 29; (2) that  
9 Defendant's criminal history category was I; and (c) that the guidelines  
10 sentencing range was 87-108 months' imprisonment. This Court imposed a  
11 sentence in at the low end of the guidelines range.

12 Following imposition of sentence, the U.S. Sentencing Commission  
13 promulgated Amendment 782, which took effect on November 1, 2014.  
14 Amendment 782 (a) reduces the guidelines offense levels across all drug  
15 types; and (b) with certain limitations, applies retroactively to defendants  
16 sentenced prior to November 1, 2014.

17 Defendant seeks a discretionary reduction in sentence pursuant to  
18 Amendment 782, and in accordance with 18 U.S.C. § 3582(c)(2) which  
19 (among other things) provides that, in certain circumstances, a sentencing

1 court “may reduce the term of imprisonment.” Pursuant to Amendment  
2 788, sentencing reductions under Amendment 782 may not result in a  
3 defendant’s release from BOP custody prior to November 1, 2015.

4 **B. Terms of Sentence Reduction Under 18 U.S.C. § 3582(c)(2)**

5 Defendant is eligible for a discretionary reduction to the guideline  
6 imprisonment range, and the parties agree that a reduction is appropriate.  
7 Pursuant to 18 U.S.C. § 3582(c)(2) and Guidelines Amendment 782: (a)  
8 Defendant’s revised total offense level is 27; (b) Defendant’s criminal  
9 history category remains I; and (c) the revised advisory guidelines  
10 sentencing range is 70-87 months’ imprisonment. Based on the foregoing,  
11 the parties jointly recommend that Defendant’s sentence be reduced to 70  
12 months’ imprisonment, a sentence at the low end of the revised guidelines  
13 range.<sup>1</sup> The parties understand and stipulate that, if this reduced sentence  
14 would result in a release date prior to November 1, 2015, then the  
15 defendant will be ordered released on November 1, 2015.

16 **C. Waivers; Review and Consent of Defendant**

17 Defendant knowingly and voluntarily waives any right to appeal any  
18 aspect of the revised sentence, *except that*, if the revised sentence exceeds

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<sup>1</sup> This Court previously determined that Defendant is eligible for safety-valve relief from the statutory minimum sentence for the offense.

1 the recommended term of 70 months, or November 1, 2015, whichever is  
2 later, Defendant may appeal that aspect of the revised sentence. *See*  
3 Declaration, attached as Exhibit 1.

4 Defendant (a) waives any right he may have to a hearing on his  
5 motion under 18 U.S.C. § 3582(c)(2); (b) waives any right he may have to  
6 attend such a hearing; (c) has reviewed this stipulation with defense  
7 counsel; and (d) agrees with and consents to this stipulation. *See*  
8 Declaration, attached as Exhibit 1.

9 **D. Reduction of Sentence Report**

10 The parties jointly request, for purposes of this Court's adjudication  
11 of Defendant's pending motion under 18 U.S.C. § 3582(c)(2), that this  
12 Court direct the United States Probation Office to submit a reduction of  
13 sentence report, confirming Defendant's revised guidelines imprisonment  
14 range and describing any public safety factors (including Defendant's  
15 institutional history) relevant to this Joint Stipulation and discretionary  
16 relief under 18 U.S.C. § 3582(c)(2).

17 **E. Acknowledgment of Reserved Rights**

18 Notwithstanding this Joint Stipulation, the United States expressly  
19 preserves and does not waive its contentions that a defendant seeking

1 relief under 18 U.S.C. § 3582(c)(2) has no constitutional or statutory right  
2 to counsel, to a hearing on the motion, or to be present at any hearing on  
3 the motion.

4 **F. Conclusion**

5 Based on the above, the parties respectfully request that the Court  
6 enter an order granting Defendant a sentence reduction pursuant to 18  
7 U.S.C. § 3582(c)(2), and reducing his sentence to 70 months' imprisonment;  
8 with all other provisions of the judgment dated September 2, 2011, to  
9 remain in effect; and with an "effective date" of November 1, 2015.

10 Respectfully submitted this 20th day of March, 2015.

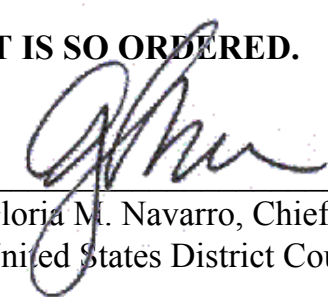
11  
12 RENE L. VALLADARES  
13 Federal Public Defender  
14

DANIEL G. BOGDEN  
United States Attorney

15  
16 By: s/ Nisha Brooks-Whittington  
17 Nisha Brooks-Whittington  
18 Asst. Federal Public Defender  
19 *Counsel for Defendant*  
20 *Jose Vidal Pena-Chavez*

By: s/ Elizabeth O. White  
Elizabeth O. White  
Appellate Chief and  
Assistant United States Attorney

**IT IS SO ORDERED.**

  
\_\_\_\_\_  
Gloria M. Navarro, Chief Judge  
United States District Court

**DATED:** 06/15/2015.

# Exhibit 1

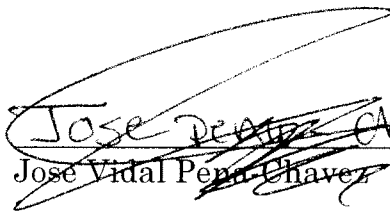
UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA  
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UNITED STATES OF AMERICA,	)	
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Plaintiff,	)	
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v.	)	2:10-CR-237-GMN-PAL
	)	
JOSE VIDAL PENA-CHAVEZ,	)	
	)	
Defendant.	)	
_____	)	

**DECLARATION IN SUPPORT OF**  
**JOINT STIPULATION UNDER 18 U.S.C. § 3582(c)(2)**

1. I, Jose Vidal Pena-Chavez, am the Defendant in the above-captioned case and the movant seeking relief in a pending motion under 18 U.S.C. § 3582(c)(2).
2. I have read and discussed with my attorney, Nisha Brooks-Whittington, the "Joint Stipulation for a Sentence Reduction Pursuant to 18 U.S.C. § 3582(c)(2)" (the "Joint Stipulation") to be filed in this case.
3. I agree with and consent to the Joint Stipulation.
4. My attorney has explained my appellate rights to me. I hereby knowingly and voluntarily waive the right to appeal any aspect of the revised sentence imposed by the Court under the terms of the Joint Stipulation, *except that*, if the revised sentence exceeds the recommended term of 70 months' imprisonment, or November 1, 2015, whichever is later, I may appeal that aspect of the revised sentence.
5. I hereby waive any right I may have to a hearing on my pending motion for discretionary relief under 18 U.S.C. § 3582(c)(2), or to attend such a hearing.

DATED this 3<sup>rd</sup> day of March, 2015.

  
Jose Vidal Pena-Chavez  
Jose Vidal Pena-Chavez